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No. 87-1927

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In the Supreme Court of the United States

OCTOBER TERM, 1988

DOROTHY ANN KNOX AND
KIMBERLY LAWANDA WARE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether the stop of petitioners in the Memphis airport was supported by reasonable suspicion that they were involved in narcotics trafficking.

2. Whether petitioners were arrested, rather than detained, when they accompanied a DEA agent to an airport security office for questioning.

3. Whether petitioners should have received *Miranda* warnings prior to questioning.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A72) is reported at 839 F.2d 285. The opinion of the district court denying petitioners' motion to suppress evidence (Pet. App. C1-C12) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 12, 1988. A petition for rehearing was denied on March 30, 1988. The petition for a writ of certiorari was filed on May 23, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following the denial of a motion to suppress evidence, petitioner Knox entered a conditional guilty plea in the United States District Court for the Western District of Tennessee to the possession of cocaine with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1). Petitioner Ware was tried and convicted of that offense. Petitioner Knox was sentenced to two years' imprisonment, to be followed by a three-year special parole term. Petitioner Ware was sentenced to three years' imprisonment, to be followed by a three-year special parole term. The court of appeals affirmed.

1. On June 14, 1985, Paul Markonni, an agent of the Drug Enforcement Agency, was patrolling the Atlanta airport. He saw petitioners and their co-defendant Altamont Champegnie get off a flight from Miami, Florida. Petitioner Ware ran toward the bathroom with one arm over her stomach. When she emerged from the bathroom, she was no longer holding her stomach. The three confederates initially acted as if they did not know each other, but they appeared to be together. Agent Markonni watched them throughout their stay in the Atlanta airport. After they boarded a flight for Memphis, Agent Markonni checked their reservations. He found that all three had made their reservations at the same time the previous day and that they had paid for their tickets in cash. He telephoned the callback number that the three had provided the airline. The person who answered the telephone did not recognize any of the names in which the tickets were purchased. Agent Markonni relayed this information to DEA Agent Richard Holmes in Memphis. C.A. App. 47-51, 63.

Agent Holmes watched petitioners and Champegnie as they got off the plane in Memphis. Petitioner Ware was

carrying a blue bag, which she later handed to petitioner Knox. Agent Holmes approached the group and said that he would like to speak to them. Petitioners and Champegnie agreed, but they said that they would first like to get their luggage. After retrieving their luggage, petitioners and Champegnie accompanied Agent Holmes to police interviewing rooms at the terminal. Agent Holmes told petitioners that they were not under arrest. When he individually asked Ware and Champegnie if he could see their airline tickets, each one denied having a ticket. Also, they both denied that they knew each other or Knox. When Agent Holmes asked Knox if he could see her ticket, she opened her handbag, revealing three tickets. Knox also initially denied knowing her traveling companions, but when the tickets were discovered, Knox admitted that she knew Ware and Champegnie. Both Ware and Knox denied owning the blue bag that they had taken turns carrying when they landed in Memphis; each one said that the bag was owned by the other. Petitioners and Champegnie then signed forms consenting to a search of their luggage, including the blue bag. A trained narcotics detection dog alerted to all of the luggage. Agent Holmes searched the blue bag and found two and one-half pounds of cocaine. He then arrested petitioners and Champegnie. C.A. App. 53-61, 64-83.

2. Petitioners moved to suppress the cocaine and their statements to Agent Holmes, and the district court denied the motion. The court found that Agent Holmes detained petitioners when he first approached them in Memphis and asked them to accompany him to the interview room for questioning. Pet. App. C6-C7. The court ruled, however, that the stop was supported by reasonable suspicion that petitioners were in possession of narcotics. Thereafter, the court held, each petitioner abandoned the blue bag by denying that it was hers. That denial, the court

held, extinguished any privacy interest petitioners might have had in the bag. *Id.* at C10-C12.

3. The court of appeals affirmed by a divided vote. Pet. App. A1-A58. The court first held that petitioners were seized when they were approached by Agent Holmes (*id.* at A12-A13), but that the detention was supported by reasonable suspicion (*id.* at A14-A18). The court also held that the investigative detention was not equivalent to an arrest because (1) the detention lasted no longer than was necessary to complete its purpose; (2) Agent Holmes did not retain petitioners' airline tickets; (3) he told petitioners that they were not under arrest; and (4) he helped petitioners retrieve their luggage at their request. *Id.* at A21-A22, A31-A33. For that reason, the court held, Agent Holmes was not required to give petitioners *Miranda* warnings before questioning them. *Id.* at A31. Finally, the court ruled that petitioners had abandoned any reasonable expectation of privacy they might have in the blue bag by denying that they owned it. *Id.* at A33-A36.[1]

Judge Edwards dissented on the question whether petitioners' statements should have been suppressed under *Miranda*; he did not address any of the Fourth Amendment issues in the case. In his view, placing petitioners in separate rooms at the airport terminal was tantamount to taking them to a police station, and petitioners therefore should have been given *Miranda* warnings before they were questioned. Pet. App. A70-A72.

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[1] In a concurring opinion, Judge Jones stated that petitioners were not "in custody" when they were questioned by Agent Holmes in separate rooms, and *Miranda* warnings were therefore not necessary. Pet. App. A57. Judge Jones also concluded that petitioners' statements were voluntarily given. *Id.* at A58.

ARGUMENT

Petitioners challenge the legality of their detention at the airport on several grounds. They argue that their initial detention was not supported by reasonable suspicion; that the detention was unduly long; that their movement to security offices at the terminal was tantamount to an arrest that was not supported by probable cause; and that they should have received *Miranda* warnings before being questioned in the offices.

1. A law enforcement officer may stop and briefly detain a person for investigative purposes if the officer observes suspicious conduct that leads him reasonably to believe in light of his experience that a suspect may be in possession of narcotics, even if the officer lacks probable cause to arrest the suspect for that crime. See, *e.g.*, *Florida* v. *Rodriguez*, 469 U.S. 1 (1984); *Florida* v. *Royer*, 460 U.S. 491, 502 (1983) (plurality opinion). In this case, Agent Holmes, who was experienced in detecting narcotics traffickers (C.A. App. 47), had reasonable grounds to believe that petitioners may have been in possession of narcotics when they were detained at the Memphis airport.[2] At that time, Agent Holmes knew the following:

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[2] Both courts below found that petitioners were detained when they were first approached by Agent Holmes, but the record would also support a contrary conclusion. Only Agent Holmes testified at the suppression hearing; petitioners did not testify or offer any evidence. According to Agent Holmes, when he approached petitioners he did not display a weapon, he told petitioners that he would like to talk to them, and he asked them to accompany him to a police interview room. Petitioners agreed to accompany Agent Holmes, but stated that they first wanted to obtain their luggage from the baggage claim area. Agent Holmes offered to help them with their luggage, and he carried it for them. Agent Holmes also told petitioners that they were not under arrest. C.A. App. 54, 65, 67-69. On this record, petitioners were not coerced into going to the security offices.

(1) petitioners were traveling to Memphis from Miami, a known source city for narcotics; (2) petitioners purchased their tickets with cash 24 hours before their departure; (3) they gave the airline a false callback number; (4) during the stopover in Atlanta, petitioner Ware exited the plane with one arm covering her stomach as if she was attempting to conceal something; and (5) petitioners and Champegnie sought to conceal the fact that they were traveling together. This Court and the courts of appeals have recognized that factors such as those are indicative of drug trafficking. See, *e.g.*, *Florida* v. *Royer,* 460 U.S. at 502 (plurality opinion); *United States* v. *Mendenhall,* 446 U.S. 544, 564-565 (1980) (opinion of Powell, J.); *United States* v. *Whitehead,* No. 87-5093 (4th Cir. May 24, 1988), slip op. 20; *United States* v. *Espinosa-Guerra,* 805 F.2d 1502, 1508 (11th Cir. 1986); *United States* v. *Hanson,* 801 F.2d 757, 761-763 (5th Cir. 1986); *United States* v. *Berd,* 634 F.2d 979, 986 (5th Cir. 1981).

The facts of this case differ from those in *Reid* v. *Georgia,* 448 U.S. 438 (1980), on which petitioners rely (see Pet. 14-16) and in which this Court found that the stop of two travelers in an airport was not supported by reasonable suspicion. In *Reid,* when the narcotics officers stopped the defendant, they knew only that (1) he and a companion had arrived in Atlanta from Fort Lauderdale, a source city for cocaine; (2) they arrived early in the morning, when law enforcement activity is light; (3) both persons carried only shoulder bags; and (4) the defendant and his companion attempted to conceal the fact that they were traveling together. In this case, Agent Holmes had additional information that the officers lacked in *Reid.* Agent Holmes knew that petitioners had purchased their tickets with cash only one day before their flight and that they had given the airline a false callback telephone number. Those factors are significant. Purchasing airline

tickets in cash and giving the airline a false callback telephone number are devices commonly used by drug couriers to avoid revealing their true identity in order to hamper police investigation.[3]

Thus, this case more closely resembles *Florida* v. *Royer*, *supra*, in which eight Members of the Court agreed that the following evidence was sufficient to establish reasonable suspicion that the suspect possessed narcotics: the suspect was traveling under an alias; he had paid cash for his ticket; he had put only a name and not an address on his checked luggage; he was young and casually dressed; and he seemed nervous while walking through the Miami airport. See 460 U.S. at 502 (plurality opinion); *id.* at 515-516 (Blackmun, J., dissenting); *id.* at 523-524 (Rehn-

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[3] The cash purchase of airline tickets is commonly cited to support a finding of reasonable suspicion. See, *e.g.*, *United States* v. *Whitehead*, slip op. 20 ("Whitehead paid for his $403 ticket in cash, thus avoiding the need to present identification"); *United States* v. *Espinosa-Guerra*, 805 F.2d at 1508; *United States* v. *Hanson*, 801 F.2d at 761-763; *United States* v. *Williams*, 726 F.2d 661, 663 (10th Cir.), cert. denied, 467 U.S. 1245 (1984); *United States* v. *Jodoin*, 672 F.2d 232, 234 (1st Cir. 1982). An alias helps to avoid detection, and drug couriers, like other criminals, frequently use an alias or a false callback telephone number. See, *e.g.*, *Florida* v. *Royer*, 460 U.S. at 502 (plurality opinion); *United States* v. *Espinosa-Guerra*, 805 F.2d at 1508; *United States* v. *Hanson*, 801 F.2d at 763; *United States* v. *Palen*, 793 F.2d 853, 857 (7th Cir. 1986); *United States* v. *Sadosky*, 732 F.2d 1388, 1393 (8th Cir.), cert. denied, 469 U.S. 884 (1984); *United States* v. *Puglisi*, 723 F.2d 779, 789 (11th Cir. 1984); *United States* v. *Ehlebracht*, 693 F.2d 333, 336 (5th Cir. 1982); *United States* v. *Jodoin*, 672 F.2d at 233; *United States* v. *Berd*, 634 F.2d at 986 (traveling under an alias is "a practice common to drug couriers"; also stating that the use of a false callback number is "a practice commonly used by narcotics couriers to prevent later detection"); *United States* v. *Lewis*, 556 F.2d 385, 389 (6th Cir. 1977), cert. denied, 434 U.S. 1011 (1978) (use of an alias when purchasing an airline ticket "indicated the likelihood of an illicit purpose in the trip").

quist, J., dissenting). Here, petitioners (and Champegnie) had paid for their tickets in cash, they gave the airline false information, and they acted in a suspicious manner while in the Atlanta terminal. In light of those similarities, the facts of this case, like those in *Royer,* suggested that petitioners may have been bringing narcotics back to their destination from Miami.

Although we believe that the court of appeals' ruling was correct, this Court may nonetheless wish to hold this case pending its decision in *United States* v. *Sokolow,* cert. granted, No. 87-1295 (June 6, 1988). In that case, the Ninth Circuit adopted a new two-part test for determining reasonable suspicion in the airport context. Under that test, before a law enforcement officer may make a *Terry* stop of a suspected drug courier traveling through an airport, the officer must be able to point to direct evidence that the suspect is involved in narcotics trafficking, and the officer must be able to supply empirical or statistical proof that the circumstantial evidence on which he relies does not also characterize a large number of innocent travelers. Some of the facts in this case are similar to those in *Sokolow,* but there are also some differences as well.[4]

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[4] There are some similarities between this case and *Sokolow:* (1) like petitioners, Sokolow was traveling from Miami, the nation's primary source city for cocaine; (2) like petitioners, Sokolow made his return reservation the day before his trip and he paid for his tickets in cash; and (3) although Sokolow did not give a false callback number (his voice was on the recording machine), the name in which his callback number was listed differed from the name in which he purchased his tickets. In addition to those facts, the agents in *Sokolow* knew that Sokolow's stay in Miami was brief, that he was nervous when he purchased the airline tickets, that he carried a large roll of $20 bills to Miami, that he nervously scanned the terminal during his stopover in Los Angeles, that he was casually dressed, and that he checked no luggage on either leg of his journey. Unlike petitioners, however,

For instance, petitioner Ware acted as if she was attempting to conceal something on her person, and all three confederates attempted to conceal the fact that they were traveling together. Those facts appear to be the type of direct proof of narcotics smuggling that the Ninth Circuit found critical to the reasonable suspicion determination in *Sokolow*. The judgment in this case therefore may survive even if this Court in *Sokolow* were to endorse the Ninth Circuit's two-part reasonable suspicion test. Nevertheless, this Court's decision in *Sokolow* could potentially affect the disposition of this case, and it therefore may be appropriate to hold the petition in this case pending the decision in *Sokolow*.

2. Petitioners also argue (Pet. 16-21) that their detention blossomed into a full-scale arrest when they accompanied Agent Holmes to the airport security offices. To support their claim, petitioners focus on the length and location of their detention, but neither factor transformed their detention into an arrest.

In *United States* v. *Sharpe*, 470 U.S. 675 (1985), this Court rejected the per se rule adopted by the court of appeals that "a 20-minute detention is too long to be justified under the *Terry* doctrine." *Id.* at 687. After noting that "our cases impose no rigid time limitation on *Terry* stops" (*id.* at 685), the Court explained that, "[i]n assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." *Id.* at 686. Under that standard, the delay

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Sokolow and his companion did not attempt to conceal the fact that they were traveling together; nor did Sokolow give the agents reason to believe that he might be concealing drugs on his person, as Ware did when she ran off the plane with one arm covering her stomach.

in this case, which Agent Holmes estimated to have been no more than 10 to 30 minutes (C.A. App. 55, 70, 79), did not render the detention of petitioners unreasonable.

Perhaps half the delay in this case stemmed from petitioners' request to retrieve their luggage before accompanying Agent Holmes to the airport security offices. See C.A. App. 55 (Agent Holmes estimated that it may have taken 10 to 15 minutes for petitioners to reach the interview rooms, counting the detour to the baggage claim area). Once Agent Holmes had escorted petitioners and Champegnie to the offices, he placed each one in a separate office and questioned each briefly about his or her travel arrangements and ownership of the luggage. Agent Holmes asked only a few questions of each person before moving on to the next. Agent Holmes then asked each person for consent to a search of the luggage. After obtaining their consent, the agent had a narcotics detection dog, which was ready and waiting (see C.A. App. 51-53, 61), examine the blue carry-on bag. Agent Holmes avoided any unnecessary delay in determining whether petitioners and Champegnie were transporting narcotics. In fact, it is difficult to imagine how Agent Holmes could have done anything more to accelerate his investigation. Within a brief period of time, he questioned petitioners and Champegnie, he discovered that petitioners had lied about their relationship, and he had a narcotics detection dog examine the carry-on bag. Agent Holmes therefore diligently pursued a means of investigation that confirmed his suspicion that petitioners were transporting drugs. The fact that his investigation, including the detour to pick up petitioner's luggage, may have taken up to 30 minutes therefore did not transform the detention into an arrest. Compare *United States* v. *Davies*, 768 F.2d 893, 900-902 (7th Cir.), cert. denied, 474 U.S. 1008 (1985) (45-minute detention of a suspect not unreasonable under *Sharpe*); *United*

States v. *Borys*, 766 F.2d 304, 312-314 (7th Cir. 1985), cert. denied, 474 U.S. 1082 (1986) (75-minute detention of luggage not unreasonable under *Sharpe*); see *Michigan* v. *Summers*, 452 U.S. 692, 700 n.12 (1981) ("If the purpose underlying a *Terry* stop—investigating possible criminal activity—is to be served, the police must under certain circumstances be able to detain the individual for longer than the brief time period involved in *Terry* [v. *Ohio*, 392 U.S. 1 (1968)] and *Adams* [v. *Williams*, 407 U.S. 143 (1972)].").

Petitioners also rely on the fact that they were questioned in security offices at the airport. That fact did not convert the detention into a custodial arrest, because the circumstances under which petitioners were questioned did not amount to custody of the type necessary to constitute a formal arrest. For instance, Agent Holmes did not use or threaten to use force, and he told petitioners that they were not under arrest. Petitioners asked to retrieve their luggage from the baggage claim area prior to the interviews, which indicates that petitioners were not so intimidated by Agent Holmes as to believe that their freedom of movement had been severely curtailed. Agent Holmes offered to assist petitioners in carrying their luggage to the offices, thereby fostering an atmosphere of cooperation rather than domination. Finally, Agent Holmes asked petitioners only a few questions before formally placing petitioners under arrest. Under these circumstances, the fact that petitioners were questioned in an airport security office was not enough to render the questioning custodial in nature. See *California* v. *Beheler*, 463 U.S. 1121 (1983), and *Oregon* v. *Mathiason*, 429 U.S. 492 (1977) (both holding that *Miranda* warnings were not required during a stationhouse interview when the suspect was told that he was not under arrest); *United States* v. *Espinosa-Guerra*, 805 F.2d at 1509-1510 (taking the suspect to an airline of-

fice for questioning does not necessarily transform the detention into an arrest).

The facts of this case contrast sharply with those in *Florida* v. *Royer,* in which the Court held that moving the suspect from the concourse to an airport office was equivalent to a formal arrest. 460 U.S. at 501-507 (plurality opinion). Royer was waiting to board a flight to New York when he was approached by the agents. Royer never agreed to accompany the agents to the interview room, and the agents retained Royer's airplane tickets, thereby preventing him from boarding his flight to New York. Without Royer's consent, the agents then used his ticket stubs to retrieve his checked baggage, which had been en route to the plane. Finally, the agents never told Royer that he was free to depart or that he was not under arrest. The encounter between Royer and the police was thus far more coercive than the encounter between petitioners and Agent Holmes. The encounter in this case was characterized by mutual cooperation, not confrontation, and the agent's actions could not have led petitioners to believe that they were under arrest. The encounter therefore did not rise to the level of an arrest, even though petitioners were questioned at an airport security office.

3. Petitioners' final claim[5] is (Pet. 21-27) that their statements to Agent Holmes should have been suppressed

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[5] Petitioners have also presented the question (Pet. ii) whether the district court erred in finding that they abandoned any reasonable expectation of privacy that they might have had in the blue carry-on bag by disclaiming that they owned it, but petitioners have not elaborated on that claim in their petition. In any event, the district court's finding (Pet. App. C11-C12) that petitioners abandoned any privacy interest they may have had in the bag does not warrant further review. Disclaiming ownership of an item of property, such as luggage, amounts to a waiver of any privacy interest in its contents. See, *e.g.*, *United States* v. *Veatch,* 674 F.2d 1217, 1221 (9th Cir. 1981); *United*

because the agent did not give petitioners *Miranda* warnings before asking them whether they were traveling together and whether they would consent to a search of the blue carry-on bag. That claim lacks merit.[6]

The *Miranda* warnings must be given before questioning only if the suspect is "in custody," and a person is not "in custody" under *Miranda* unless he is subjected to a " 'formal arrest or restraint on [his] freedom of movement' of the degree associated with a formal arrest." *California* v. *Beheler,* 463 U.S. at 1125 (quoting *Oregon* v. *Mathiason,* 429 U.S. at 495). Accord *Berkemer* v. *McCarty,* 468 U.S. 420, 440 (1984); *New York* v. *Quarles,* 467 U.S. 649, 655 (1984); *Minnesota* v. *Murphy,* 465 U.S. 420, 430-431 (1984). Moreover, in *Berkemer* v. *McCarty, supra,* this Court held that a person need not be given *Miranda* warnings during a *Terry* stop when a suspect is briefly detained for investigative purposes. *Berkemer* v. *McCarty,* 468 U.S. at 440.

Petitioners do not deny that, during an investigative detention, a police officer may ask a suspect a few questions that are related to the purpose of the detention without first giving a suspect *Miranda* warnings. Rather, peti-

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States v. *Tolbert,* 692 F.2d 1041, 1044-1045 (6th Cir. 1982), cert. denied, 464 U.S. 933 (1983); *United States* v. *Kendall,* 655 F.2d 199, 202 (9th Cir. 1981), cert. denied, 455 U.S. 941 (1982); *United States* v. *Berd,* 634 F.2d at 987; *United States* v. *Miller,* 589 F.2d 1117, 1131 (1st Cir. 1978), cert. denied, 440 U.S. 958 (1979).

In any event, even if petitioners retained some privacy interest in the blue carry-on bag, the search of the bag was valid pursuant to petitioners' voluntary consent to the search of all their luggage.

[6] Petitioners err in suggesting (Pet. ii, 27) that the cocaine found in the blue carry-on bag also should be suppressed on this ground. Although this Court has not conclusively resolved the issue, we submit that a violation of *Miranda* does not require the suppression of physical evidence, rather than a suspect's statements. See *New York* v. *Quarles,* 467 U.S. 649, 665-672 (1984) (opinion of O'Connor, J.).

tioners' claim is essentially that their detention went beyond a *Terry* stop and was tantamount to an arrest. As we have explained above, however, petitioners were not formally arrested until the narcotics detection dog alerted to the odor of drugs in the blue carry-on bag, and the detention of petitioners prior to that point did not amount to a restraint that was equivalent to a formal arrest. The fact that the questioning took place in an airport security office did not require that *Miranda* warnings be given, because a person who is questioned at a police station is not necessarily "in custody" for *Miranda* purposes. *California* v. *Beheler, supra*; *Oregon* v. *Mathiason, supra*; cf. *United States* v. *Mendenhall,* 446 U.S. 544, 557-558 (1980).[7] Accordingly, Agent Holmes did not have to give petitioners *Miranda* warnings before asking them whether they were traveling together and whether they would consent to a search of their luggage.

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[7] The decision below does not conflict with *United States* v. *Beraun-Panez,* 812 F.2d 578 (9th Cir. 1987), on which petitioners rely (Pet. 25-26). The difference between the result in that case and this one is attributable to a difference in the facts, not a disagreement on principle. The Ninth Circuit applied the same standard in that case that the Sixth Circuit applied in this one (see 812 F.2d at 580) to facts that the court of appeals viewed as highly coercive. *Id.* at 579 (suspect questioned for 30-90 minutes; he was asked whether he committed the crime under investigation; he was told that he could be deported if he was convicted; "the officials resorted to a good guy/bad guy routine" during questioning; the suspect not told that he was not under arrest).

CONCLUSION

With respect to the issue raised in Question I(a) of the petition, the petition should be held pending the decision in *United States* v. *Sokolow*, cert. granted, No. 87-1295 (June 6, 1988), and then disposed of as appropriate in light of that decision. In all other respect, the petition should be denied.

Respectfully submitted.

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and then admitting they knew each other, should have been suppressed for lack of Miranda warnings. Finally, they contend that their abandonment, if any, of the travel bag was the product of and tainted by the illegal search and that they have standing to contest the validity of its search.

A. The Validity of the Investigatory Stop

In assessing defendants' claims on this issue, we must establish, as a threshold question, whether the actions of Agent Holmes and the Memphis police constituted a "seizure" within the meaning of the Fourth Amendment. Only if they were seized are defendants vested with any right to constitutional safeguards. United States v. Mendenhall, 446 U.S. 544, 553 (1980). The district

court, relying on our decision in United States v. Jefferson, 650 F.2d 854 (6th Cir. 1981), found that defendants had been seized when approached by Holmes and asked to accompany him for questioning. We agree.

The Supreme Court has identified a "seizure" as occurring at that point in time when, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Mendenhall, 446 U.S. at 554. In Jefferson, we held that:

> [A]gent Markonni did not merely stop Jefferson to ask him a few questions; he stopped him and immediately after identifying himself as a DEA agent requested Jefferson to accompany him to the bggage claims office. In these circumstances, Jefferson could not reasonably believe that he was free to leave. This was a "seizure" within the meaning of the Fourth Amendment.

650 F.2d at 856.

However, even brief investigatory detentions arising to the level of a "seizure" are constitutionally permissible if "supported by a reasonable and articulable suspicion that the person [was] engaged in criminal activity." Reid v. Georgia, 448 U.S. 438 (198). In determining which suspicions are "reasonable and articulable," courts are directed to consider the totality of the circumstances. United States v. Cortez, 449 U.S. 411, 417 (1981). The police must demonstrate the existence of an "objective" as well as a "particularized" basis for their suspicions. Id. The first requirement is satisfied by evidence showing a common pattern of criminal operation; in this case, a showing that defendants met several charac-

teristics of the DEA's drug courier profile.[2] The district court found that the agents' knowledge that (1) defendants were traveling from Miami, a source city, (2) their airline tickets were purchased with cash, and (3) the call-back number given to the airline was inaccurate, was sufficient to satisfy the first prong of the test. Noting that satisfaction of the first prong was

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[2]"The 'drug courier profile' is an abstract of characteristics found to be typical of persons transporting illegal drugs." Florida v. Royer, 460 U.S. 491, 493 n.2 (1983). As we noted in United States v. Saperstein, the variety of traits constituting these "profiles," which varies from airport to airport, defies any attempt at mechanical application and requires courts to assess "whether in each particular case the combination of facts present and the manner in which they are exhibited justifes a stop." 723 F.2d 1221, 1228 (6th Cir. 1983).

not enough, the district court found the requisite particularized suspicion in Agent Markonni's observations at the Atlanta airport; namely, defendant Ware exiting the plane "as if holding something under her clothing" as well as the fact that defendants initially appeared unfamiliar with each other but were later seen talking together.

Defendants object to the aggregation of the agents' observations to establish the requisite "reasonable and articulabe" suspicions. They contend that, individually, nervousness (citing United States v. Andrews, 600 F. 2d 563 (6th Cir.), cert. denied sub nom. Brooks v. United States, 444 U.S. 878 (1979), travel to and from a "source city" (citing United States v. Saperstein, 723 F.2d 1221 (6th Cir. 1983)), and deplaning at

different times and appearing unfamiliar with one another (citing Reid v. Georgia, 448 U.S. 438 (1980)), are entirely consistent with innocent behavior and therefore entitled to no weight. While it is true that each of these factors, in isolation, would be insufficient as a matter of law to establish the requisite level of suspicion, this court, following the mandate of the Supreme Court, has held that articulable suspicion is to be based upon an assessment of all circumstances surrounding the actions of a suspected wrongdoer. United States v. Williams, 754 F.2d 672 (6th Cir. 1985). Further, a pattern of suspicious behavior need only be recognizable by one "versed in the field of law enforcement." Cortez, 449 U.S. at 417. We find the following factors

relevant and sufficient to justify the defendants' seizure at the Memphis airport: (1) they were traveling from a "source city"; (2) their tickets were purchased only the day before and paid for with cash; (3) they deplaned separately and attempted to conceal the fact that they were traveling together; (4) sometime after deplaning, both in Atlanta and Memphis, defendants were observed talking together; (5) immediately upon deplaning in Atlanta, defendant Ware rushed to the restroom holding her arms across her stomach; and (6) none of the defendants were known at the callback number given when their tickets were puchased.

B. The Challenge to the Duration of the Detention

The defendants next argue that, even

if their initial detention was proper, Agent Holmes exceeded its permissible scope and duration. The Supreme Court has directed that "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500 (1983). Similarly, the investigative methods employed should be the least intrusive means reasonable available to verify or dispel the officer's suspicion in a short period of time. Id. Further, the government has the burden of demonstrating that the seizure was properly limited, although the scope of the permissible intrusion will vary with the particular facts of each case. Id. Defendants argue that their detention of approximately thirty minutes was

inherently unreasonable. This issue has been recently addressed by the Supreme Court in United States v. Sharpe, 470 U.S. 675 (1985), wherein the Court refused to establish a per se rule as to the permissible duration of an investigatory stop. The Court, in reversing the Fourth Circuit Court of Appeals, stated that "[t]the Court of Appeals' decision would effectively establish a per se rule that a twenty minute detention is too long to be justified under the Terry [investigatory stop] doctrine. Such a result is clearly and fundamentally at odds with our approach in this area." Id. at 686 The Sharpe Court's opinion on this issue bears extensive quotation:

> In assessing whether a detention is too long in duration to be justified as an investigative

> stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant... A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation and in such cases the Court should not indulge in unrealistic second guessing.... A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objective of the policy might have been accomplished. But "[t]he fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, in itself, render the search unreasonable."... The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.

Id. at 686-87 (citations omitted).

Contributing to the length of defendants' detention in this case was their initial insistence that they did

not know each other, despite the fact that they were walking together at the time they were approached by Holmes and had been observed passing the blue travel bag between them. Finally, we observe that the investigation was expedited through the presence of the drug-sniffing dog at the time of defendants' detention, which allowed a sniff search to be conducted as soon as defendants had orally consented. The Supreme Court expressly endorsed such a procedure in Royer, stating:

> The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage. There is no indication here that this means was not feasible and available. If it had been used, Royer and his luggage could have been momentarily detained while this investigative procedure was carried out...A negative result would have freed Royer in short

order; a positive result would have resulted in his justifiable arrest on probable cause.

460 U.S. at 505-506 (emphasis added.[3]

C. The Allegations of "Custodial Arrest" and Resulting Miranda Violation

Defendants contend this case is indistinguishable from Royer, in which the Supreme Court ruled that statements secured as a result of questioning in a separate airport office and without benefit of Miranda warnings must be suppressed. Admittedly, this is a difficult and unsettled area of law. We are guided in our analysis by somewhat

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[3]We observe that Agent Holmes had arranged to have a Narcotics Unit dog present at the time of defendants' detention and that the dog-sniff carried out while their written consent was being obtained indicated a positive response to all pieces of defendants' luggage.

sparse and ambiguous precedent; however, a few rules of general applicability have emerged. The Supreme Court has counselled that "[a]lthough the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving Miranda protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983)(per curiam) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)(per curiam)). The test is an objective one: would a reasonable person in the defendant's position have felt that he was under arrest or was "otherwise deprived of his freedom of action in any significant way." Miranda,

384 U.S. at 477. Furthermore, recent Supreme Court cases have clarified that more is required to support a finding of custody than the fact that the questioning took place in an "inherently" coercive environment.

> [A] noncustodial situation is not converted to one in which Miranda applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a "coercive environment." Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom

> the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was that sort of coercive environment to which Miranda by its terms was not applicable, and to which it is limited.

Mathiason, 429 U.S. at 495. Accord United States v. Wallraff, 705 F. 2d 980, 991 (8th Cir. 1983)("simply identifying the place where an interrogation occurs does not conclusively establish the presence or absence of custody").

In Florida v. Rodriguez, 469 U.S. 1 (1984), the Supreme Court overturned the lower court's order suppressing evidence obtained as a result of an airport detention and search, stating that the court's order "reflects a misapprehension of the controlling principles of law governing airport stops" as set forth in Royer and Mendenhall. In Rodriguez,

three suspects were approached at the Miami airport after DEA agents observed them engaging in a certain behavior which they deemed suspicious. Defendants were questioned after moving from one side of the concourse and, based on inconsistencies in their answers, the agents asked for and received permission to search their luggage, whereupon a quantity of cocaine was discovered. The Court explicitly stated that "[s]uch a temporary detention for questioning in the case of an airport search is reviewed under the lesser standard enunciated in Terry v. Ohio, and is permissible because of the 'public interest involved in the suppression of illegal transactions in drugs or of any other serious crime.' " 469 U.S. at 5 (quoting Royer, 460 U.S. at 498-99).

In Berkemer v. McCarty, 468 U.S. 420 (1984), the Court rejected the argument that Miranda warnings should not be required in custodial interrogations which result from stops for routine traffic violations. Although the court refused to differentiate between custodial interrogations resulting in felony charges as opposed to misdemeanor charges, it also held that roadside questioning of a motorist detained pursuant to a routine traffic stop did not constitute custodial interrogation. In so ruling, the Court analogized the routine traffic stop to a Terry stop, pointing out that in all such detentions:

> [T]he officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obligated to respond...The com-

> paratively nonthreatening character of detentions of this sort explains the absence of any suggestion to our opinions that Terry stops are subject to the dictates of Miranda.

Id. at 439-40.

Our task in this case is to determine whether the fact that defendants were escorted voluntarily to separate rooms in the airport for questioning constituted a restraint on their freedom tantamount to a formal arrest. We hold that it did not. In a previous airport-search case involving questioning in a private office, we concluded that appellant's voluntary presence in the office did not convert an otherwise lawful Terry stop into an arrest. United States v. Smith, 574 F.2d 882, 886 (6th Cir. 1978). We also noted that "[s]ome element of official coercion" would be necessary to transform such a scenario

into the equivalent of an arrest. Id. at 886 n. 15.

In Royer, the Court clearly found the following factors, in combination, persuasive:

1) questioning in a separate airport office;
2) retention of the defendant's ticket and identification;
3) retrieval of defendant's luggage by the DEA without his consent; and
4) failure to inform defendant he was free to leave.

These particular facts were determinative of the Court's conclusion that Royer was involuntarily confined under circumstances tantamount to arrest and that, the detention having exceeded the limits of an investigative stop, any

"consent" to the search of his luggage was invalid.

The sole corresponding factor in the case at bar is the fact that defendants' questioning took place in the airport security office. There is no evidence in the record showing that any of the defendants' tickets were retained by the agents. Further, their bags were retrieved with the agents' assistance at the defendants' request. While Agent Holmes did not specifically inform them that they were "free to leave," he did tell them they were not under arrest. And we attach no significance to the fact that defendants were placed in separate rooms for questioning. When two or more individuals are suspected of illegal activity, it is obvious that questioning them together may result in each suspect backing up the story given

by the others. Separate questioning often will reveal inconsistencies in suspects' answers which may lead either to probable cause to arrest or to a subsequent search revealing contraband. See, e.g., United States v. Poitier, 818 F.2d 679 (8th Cir. 1987)(inconsistent answers given during separate consensual questioning provided reasonable suspicion for Terry stop); United States v. Nembhard, 676 F. 2d 193 (6th Cir. 1982) (curbside questioning, in combination with separate questioning in airport office, gave rise to probable cause). But cf., United States v. Ceballos, 812 F.2d 42 (2d Cir. 1987).

Following the dictates of the Supreme Court, we reject, as the sole criterion for the attachment of Miranda rights, reliance on the concept of an "inherently

coercive environment." And since the record before us is devoid of any evidence of official coercion, there is no basis for suppressing defendants' voluntary responses to the agent's questioning.

D. The Abandonment Issue

Defendants assert that the district court improperly found that none of them possessed standing to challenge the search of the blue travel bag. Champegnie further asserts that, since there is no evidence that he had abandoned his briefcase, the cocaine handbook found within should have been suppressed. We hold that none of the defendants had standing to challenge the admissibility of the cocaine found in the blue travel bag since none of them exhibited a legitimate expectation of

privacy in the bag at the time of the search. Katz v. United States, 389 U.S. 347 (1967). A legitimate expectation of privacy incorporates two elements: first, whether the defendant "exhibited-an actual (subjective) expectation of privacy," and, second, whether the defendant's subjective expectation is "one that society is prepared to recognize as reasonable." United States v. Tolbert, 692 (f.2d 1041, 1044 (6th Cir. 1982), cert, denied, 464 U.S. 933 (1983) (quoting Katz). Fourth Amendment rights are personal and may not be asserted vicariously. Rakas v. Illinois, 439 U.S. 128, 133 (1978). "[D]efendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have been violated."

United States v. Salvucci, 448 U.S. 83, 85 (1980). When a defendant is aggrieved by an allegedly illegal search of a third party's property, the Fourth Amendment rights of that defendant have not been infringed. Rakas, 439 U.S. at 134. See also United States v. Calandrella, 605 F.2d 236, 242 (6th Cir.), cert. denied sub nom. Kaye v. United States, 444 U.S. 991 (1979).

In United States v. Tolbert, this court found that when the defendant had specifically disclaimed ownership in a piece of luggage in which drugs were later discovered, the defendant had not exhibited an actual expectation of privacy in that luggage. "One who disclaims any interest in luggage thereby disclaims any concern about whether or not the contents of the luggage remain

private." Tolbert, 692 F.2d at 1045 (quoting United States v. Miller, 589 F.2d 1117, 1131 (1st Cir. 1978), cert. denied, 440 U.S. 958 (1979)). This Court held that since the defendant had affirmatively indicated that she had no interest in the luggage, she had no expectation of privacy as to the contents; therefore, her Fourth Amendment rights were not violated by the search of the luggage. Tolbert, 692 F.2d at 1045. Appellants Knox and Ware both specifically disclaimed ownership in the blue travel bag. The trial court, citing Tolbert, properly found that this disclaimer constituted an abandonment that resulted in appellants' lack of standing to challenge the search.[4]

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[4]Because we find that Knox and Ware abandoned the travel bag, we do not

Appellant Champegnie clearly did not establish or even attempt to establish any expectation of privacy in the bag since he never had possession nor did he ever claim any interest in the bag. Champegnie's lack of standing to contest the search is firmly within the Rakas rule that the Fourth Amendment rights of an individual who claims to be aggrieved by the search of a third person's pro-

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reach their argument that any consent given by them to search their bags was vitiated by virtue of their prior illegal detention. In any event, having found that the government did not exceed the permissible bounds of investigation in this Terry-type stop, this argument must fail. In Royer, the Court stated that a defendant's voluntary consent to search given while justifiably detained on a reasonable suspicion permits the introduction of any resulting evidence at a subsequent trial. 460 U.S. at 502. We would point out that, under Royer, the positive reaction of the Narcotics Unit dog alone would have established probable cause to not only search defendants' luggage, but to arrest them immediately.

perty have not been violated. Rakas, 439 U.S. at 134. Therefore, Champegnie may not challenge the search.

Finally, defendant Champegnie suggests that, because the government did not contest his standing to challenge the search of the briefcase, its contents (including the copy of The Cocaine Handbook) should automatically have been suppressed. Although it appears that Champegnie acknowledged ownership of the briefcase, and therefore would have standing to contest its search, he alleges no facts in support of his assertion that his written consent was coerced. Having found that his detention and questioning did not exceed the bounds of a permissible investigatory stop and that Champegnie's cooperation therein was voluntary, we conclude that his

written consent to the search of the search of the breafcase nullifies any claim he now makes regarding its validity.[5]

E. Sufficiency of the Evidence as to Defendant Champegnie

We turn now to defendant Champegnie's contention that the evidence was insufficient to sustain his conviction for aiding and abetting in the possession of a controlled substance. 18 U.S. §2. This court has repeatedly stated that when a defendant challenges the suf-

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[5]As this court recently noted in United States v. Williams, a similar airport drug search case, a defendant in such circumstances may believe that his "best bet [is] to appear to consent [to the search] and then make a contrary claim at a later suppression hearing." 754 F.2d 672, 676 (6th Cir. 1985). It appears to the court that Champegnie is attempting just such a strategem.

ficiency of the evidence, "[a]ny inferences that are to be drawn must be made in the light most favorable to the government." United States v. Winston, 687 F.2d 832, 834 (6th Cir. 1982)(citing Glasser v. United States, 315 U.S. 60, 80 (1942)). To be found guilty of the crime of aiding and abetting a criminal venture, a defendant must associate himself with the venture in a manner whereby he participates in it as something that he wishes to bring about and seeks by his acts to make succeed. Winston, 687 F.2d at 834. We defined the test in reviewing sufficiency of the evidence claims as deciding "whether a reasonable mind might find guilt beyond a reasonable doubt." Id.

We have no trouble concluding that reasonable jurors could find that Champegnie acted with the specific

intent to facilitate the possession and/or distribution of cocaine. His possession of The Cocaine Handbook is entitled to be considered for whatever inferences it may raise as to Champegnie's involvement and/or interest in illegal drugs. The book contains a section entitled "Health Risk" that suggests that cocaine is not addictive in the same manner as drugs such as heroin, as well as a section covering "Testing for Purity." The book conceivably constitutes a useful reference for those dealing in drugs. The book was found in Champegnie's briefcase, his only piece of luggage. He was also traveling under the name of A. Stanford, which constituted a deliberate misrepresentation of his identity. In addition, he initially refused to acknowledge that he knew either Knox or

Ware, despite that fact that he was observed talking to them at both the Atlanta and Memphis airports and his reservation was made at the same time as theirs. When questioned further, he twice changed his story by stating that he met them on the plane and later stating that he had known them a few months.

Jurors as fact finders are entitled to make common sense conclusions regarding human behavior. Cortez, 449 U.S. at 418. The jury could reasonably conclude from the foregoing circumstantial evidence that Champegnie had purposefully attempted to disassociate himself from Knox and Ware in the event of detection. Therefore, the decision of the district court with respect to all the foregoing issues is AFFIRMED.

JONES, Circuit Judge, concurring. I join in the judgment of Judge Guy affirming the district court's judgments of conviction as to all three defendants. However, there is more to be said since defendants also challenge, under the fifth amendment, the district court's unexplained denial of their motion to suppress statements made prior to the receipt of Miranda warnings. While I ultimately am compelled to conclude that no fifth amendment Miranda violation is established because the guiding legal principles in this area are cloudy, I write separately.

In Miranda v. Arizona, 384 U.S. 436 (1966), the Supreme Court held that:

> [T]the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the

> defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

Id. at 444 (footnote omitted). Thus, when deciding whether Miranda warnings were improperly withheld, it must first be determined whether the defendants were subject to "interrogation" while "in custody."

It is clear that the brief questioning to which the defendants were subjected constituted "interrogation" under the plain language of Miranda, as well as the subsequent explication in Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980). The Court explained in Innis that:

> the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of th epolice (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Id. at 301 (footnotes omitted). The term "incriminating response" was defined as "any response-whether inculpatory or exculpatory-that the prosecution may seek to introduce at trial." Id. at 301 n.5 (emphasis in original). Since the responses elicited from the three defendants in the instant case were inherently contradictory and, therefore, subject to introduction into evidence by the prosecution as proof of both the defendants' guilty states of mind and the officer's justification for continued detention, they were "incriminating responses."

The question whether defendants were "in custody" while they were isolated and detained in the airport security rooms in much more problematic. Referring to the original Miranda standard, one might be hard pressed to argue that defendants were not deprived of their freedom of action in any significant way. Indeed, the factual similarity between the instant case and the Miranda cases is noteworthy - all involved police questioning of suspects while isolated in police rooms without the suspect being warned of his constitutional rights to counsel and against self-incrimination. See 384 U.S. at 445.

Despite the relative simplicity of the Miranda standard for determining whether a person is "in custody," the Supreme Court in a 1983 per curiam summarily reversed a decision of a

California state court and essentially redefined the relevant inquiry:

> Although the circumstances of each case must certainly influence a determination of whether a suspect is in 'custody' for purposes of receiving Miranda protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedmon of movement' of the degree associated with a formal arrest.

California v. Beheler, 463 U.S. 1121, 1125 (1983)(per curiam)(quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam)). The italicized language could be read to engraft the fourth amendment concept of arrest onto the requirement of custody - a concept that had in some respects been treated as a fifth amendment term of art. This would be all the more unusual since the relevant provisions of the fourth and fifth

amendments are based on different principles; one protects against unreasonable seizures while the other grants an absolute guarantee against compelled self-incrimination. As the Court stated in Fisher v. United States, 425 U.S. 391, 400 (1976), "the Fifth Amendment's strictures, unlike the Fourth's, are not removed by showing reasonableness." Nonetheless, Beheler's amended definition of the term "in custody" has been applied without further discussion in subsequent cases. See, e.g., Berkemer v. McCarty, 468 U.S. 420, 440 (1984); New York v. Quarles, 467 U.S. 649, 655 (1984); Minnesota v. Murphy, 465 U.S. 420, 430-31 (1984).

The real difficulty with this interpretation of the Beheler definition is apparent in the instant case. Investigative detentions conducted in

airport security offices are very controversial from a judicial/constitutional perspective, see. e.g., Florida v. Royer, 460 U.S. 491 (1983), but at the same time they are a highly effective law enforcement tactic. Effectiveness alone, however, does not validate that which is constitutionally invalid. The effectiveness of this tactic is due in no small part to the psychological objectives of isolated, police-dominated interrogation discussed at length in Miranda, 384 U.S. at 448-56. For these reasons, it is safe to say that nonconsensual, investigatory detentions conducted in airport security offices represent the outer limits of legitimate Terry seizures. Terry v. Ohio, 392 U.S. 1 (1967). Still, since a valid Terry seizure is, by definition, not a "full seizure" - a term synonomous with

"arrest" - a person properly seized on reasonable and articulable suspicion for a brief investigatory detention could never be considered "in custody" so long as the scope and duration of the Terry stop do not exceed the underlying justification. This would be true regardless of the fact that, ignoring momentarily the fourth amendment's considerations of the reasonableness of the seizure, the nonconsensual detention in a private police room for purposes of interrogation might closely resemble the type of "custody" the Miranda court had in mind.

I recognize that this theory of the impact of Beheler on airport Terry stops is arguably supported by certain dicta in the Berkemer opinion. In that case, the Supreme Court analogized the non-custodial nature of an ordinary traffic

stop to Terry stops. After outlining the constitutional rationale for allowing Terry seizures on less than probable cause, the Court stated:

> [T]his means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obligated to respond. And, unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released. The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda.

Berkemer, 468 U.S. at 439-40 (footnotes omitted).[1] Nevertheless, the Court

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[1]Of course, it must be observed that the detainee is not necessarily told that he need not respond to the officer's questions, and also need not be aware of the strict limitations on the scope and

declined to announce any new bright line rule tying a determination of fifth amendment custodial interrogation to any particular fourth amendment situation. Id. at 441. Instead, it reaffirmed the case-by-case approach: "fidelity to the doctrine announced in Miranda requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." Id.. at 437. I likewise am unable to recognize such a bright line rule in this case.

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duration of the investigatory detention. If suspects were not routinely ignorant of their rights in this regard, the investigatory detention arguably would be a much less effective tool. The only thing a reasonable person subjected to a Terry seizure must know is that he is not free to leave. This knowledge could certainly exacerbate the coercive atmosphere of the interrogation.

Further, I reject the argument that, in view of Beheler, custodial interrogation can never be found in a setting that, under a pure fourth amendment analysis, is a valid investigatory detention based upon reasonable and articulable suspicion. See United States v. Streifel, 781 F.2d 953 958 (1st Cir. 1986) (suggesting that it is only a general rule that Terry stops do not implicate Miranda). If it is true that custodial interrogations and brief investigatory detentions are mutually exclusive, it is because the Supreme Court has held that "detention for custodial interrogation - regardless of its label - intrudes so severely on interests protected by the fourth amendment as necessarily to trigger the traditional safeguards against illegal

arrest." Dunaway v. New York, 442 U.S. 200, 216 (1979). See also United States vs Manbeck, 744 F.2d 360, 379 n.30 (4th Cir. 1984), cert. denied, 469 U.S. 1217 (1985). Accordingly, it is not impossible for investigative Terry stops to degenerate into custodial interrogation requiring Miranda warnings. But when they do, the holding of Dunaway requires that the seizure be justified by full probable cause as opposed to mere reasonable suspicion.[2]

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[2]If it comes to pass that law enforcement officers have difficulty understanding and applying this rule, it must be recognized that the uncertainty is due to the recent, unchecked expansion of the scope of permissible investigatory detentions under the Terry doctrine rather than any modification of the applicability of Miranda safeguards to custodial interrogation. As the Berkemer opinion made clear, ease of application alone cannot outweigh the individual's constitutional privilege against coerced

Turning to the application of these principles to the case at bar, two questions must be addressed: (1) were defendants interrogated without the benefit of Miranda warnings while "in custody"; and, if not, (2) were their statements nonetheless involuntary? It should be observed that such an inquiry would have been assisted by specific findings of fact in the district court, but the existing record and the sub silentio denial of the motion to suppress provide a sufficient basis upon which to proceed. Notably, the defendants' failure to testify at the suppression hearing leaves Agent Holmes' version of the encounter uncontradicted

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self-incrimination and the need for prophylactic warnings to secure that privilege.

and, perhaps not surprisingly, his testimony does not suggest that the defendants' statements were coerced in any way.

Although the defendants were technically seized at the time of their questioning in the airport security rooms, the record and recent Supreme Court decisions allow but one conclusion- that they went from the public concourse to the security rooms "voluntarily." The conclusion that the defendants were seized is another way of saying that defendants defendants reasonably realized that they were not free to leave the premises. Nonetheless, it does not necessarily follow that the defendants reasonably perceived that they were confined to the security rooms. Thus, I do not find the uncon-

tested facts of this case to be materially distinguishable from those of Oregon v. Mathiason, 429 U.S. 492 (1977) (per curiam) and United States v. Harris, 611 F.2d 170 (6th Cir. 1979). See also Beheler, 463 U.S. at 1124 n.2; Sevier v. Turner, 742 F.2d 262 268 (6th Cir. 1984) ("the mere location of an interview and the fact that an investigation has focused upon a particular person, without more, will not support a finding of custody"). Under these holdings, the defendants were not in custody at the time of the interrogationin question and Miranda warnings were not required. As an intermediate appellate court we are bound to follow those holdings, even if they raise serious questions.

Even if Miranda warnings were not required, a finding that the statements

were involuntarily made or coerced in violation of the fifth amendment would require their suppression. However, viewing the totality of the circumstances as set forth in the record, I find insufficient evidence to support such a conclusion and therefore I concur in the judgment of the majority.

EDWARDS, Senior Circuit Judge, dissenting. As I see this case, the significant question is: where three airplane passengers are stopped by federal officers and led into separate airport offices wherein each is questioned about possession of cocaine found in the luggage of one of them and each separately makes statements which are subsequently used to convict him or her of illegal possession of

cocaine,[1] does Miranda v. Arizona require reversal of said convictions since concededly no Miranda warnings were given until after statements had been secured?

I would answer this question in the affirmative.

This case was tried before the District Court for the Western District of Tennessee. The defendants now appeal their convictions for possession of cocaine with intent to distribute. The facts herein clearly allowed the District Court to find that defendants

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[1]Appellant Dorothy Ann Knox submitted a Conditional Plea of Guilty which, however, "specifically reserves...all appeal rights as to all issues raised in defendant's Motion to Suppress..." The practical effect of this Plea is to place her before this court in the same position as the other two defendants and I treat all three jointly in this opinion.

were in possession of cocaine with intent to distribute and were caught in such possession. That, however, does not end this argument.

On June 14, 1985, Memphis Drug Enforcement Administration (DEA) Agent Richard Holmes received a telephone call from DEA Agent Paul markonni, who was assigned to the airport detail in Atlanta, Georgia. Agent Markonni advised Agent Holmes that he had observed one male and two females (later identified as the three defendants) at the Atlanta Airport when they exited a plane arriving from Miami, Florida. Agent Markonni reported that he noticed one of the females (Ware) holding one of her arms across her abdomen, as if she were holding something, and rush to an airport restroom. When Ware returned